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7 LIBERTY INSURANCE CORPORATION

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

12 LIBERTY INSURANCE
CORPORATION.

Plaintiff/Petitioner.

V.

15
16 PROTECTED INSURANCE
17 PROGRAM FOR SCHOOLS &
COMMUNITY COLLEGES JOINT
POWERS AUTHORITY

Defendants/Respondents.

Case No.

PETITION TO CONFIRM ARBITRATION AWARD

Petitioner Liberty Insurance Corporation (“Liberty”) alleges as follows:

INTRODUCTION

23 1. Respondent PROTECTED INSURANCE PROGRAM FOR
24 SCHOOLS & COMMUNITY COLLEGES JOINT POWERS AUTHORITY
25 (“PIPS”) is a Joint Powers Authority formed in California pursuant to Government
Code § 6500, *et seq.*

Case No

1 2. On December 6, 2022, PIPS filed a Demand for Arbitration in
2 connection with an underlying workers' compensation claim involving a former
3 employee of Beverly Hills Unified School District ("claimant").

4 3. In the Demand for Arbitration, PIPS sought \$246,728 in
5 reimbursement of claim expenditures from Liberty under an excess policy issued to
6 PIPS, as well as \$152,000 in prejudgment interest.

7 4. Liberty hereby seeks an order from this Court confirming the
8 arbitration award dated July 26, 2023 rendered in an arbitration before Mark L.
9 Kahn of Altman, Blitstein & Blinder, and entry of judgment thereon pursuant to 9
10 U.S.C. § 13.

PARTIES

12 5. Petitioner Liberty is a corporation that is incorporated under the laws
13 of the State of Illinois, and maintains its principal place of business in Boston,
14 Massachusetts.

15 6. Respondent PIPS is a Joint Powers Authority formed in California
16 pursuant to Government Code § 6500, *et seq.* As such, respondent is a citizen of
17 California.

JURISDICTION AND VENUE

19 7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
20 1332(a)(1), in that this is a civil action between a citizen of California and a citizen
21 of Illinois, and the amount in controversy exceeds \$75,000, exclusive of interest and
22 costs.

23 8. Venue is proper in this Court because the arbitration took place in Los
24 Angeles, California.

FACTS

26 9. On December 6, 2022, PIPS filed a Demand for Arbitration in
27 connection with an underlying workers' compensation claim involving a former

1 employee of Beverly Hills Unified School District pursuant to a confidential
 2 arbitration agreement between the parties.

3 10. According to the Demand for Arbitration, the claimant suffered three
 4 interrelated workers' compensation injuries: a specific injury on September 24,
 5 2010; a specific injury on October 14, 2011; and a cumulative trauma ("CT") from
 6 August 2005 to October 14, 2011.

7 11. The Demand for Arbitration also claimed that only the September 24,
 8 2010 specific injury was covered under the Liberty Policy but that the other two
 9 non-covered injuries were a "compensable consequence" of the covered injury.

10 12. Accordingly, PIPS sought 100% of the claim expenditures related to
 11 the covered September 24, 2010 specific injury, as well as a portion of the claim
 12 expenditures related to the October 14, 2011 specific injury and the CT claim.

13 13. The total amount of claim expenditures sought by PIPS totaled
 14 \$246,728. PIPS also sought \$152,000 in prejudgment interest.

15 14. In its response to the Demand for Arbitration, Liberty argued that (1)
 16 PIPS released the CT claim by way of a separate and confidential settlement with
 17 Liberty; (2) the October 14, 2011 specific injury was not a "compensable
 18 consequence" of the covered September 24, 2010 specific injury but rather a
 19 separate, discrete injury; (3) the CT claim was not a "compensable consequences" of
 20 the covered September 24, 2010 specific injury because it began in August 2005,
 21 many years before the covered September 24, 2010 specific injury; (4) Liberty is
 22 only required to reimburse PIPS for claims covered under the Liberty Policy; and
 23 (5) PIPS's position contradicted a Workers Compensation Appeals Board
 24 ("WCAB") Stipulation that it entered into, in which it dismissed all body parts other
 25 than the right shoulder¹ in connection with the covered September 24, 2010 specific

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¹ As well as accompanying psych.

Case No. _____

PETITION TO CONFIRM ARBITRATION AWARD

1 injury. In other words, PIPS could not take a legal position in the arbitration that
2 contradicted the position it took at WCAB.

3 15. The arbitrator issued an arbitration award on July 26, 2023. Attached
4 hereto as Exhibit A is a true and correct copy of the award issued by Mark L. Kahn
5 of Altman, Blitstein & Binder dated July 26, 2023.

6 16. In the award, the arbitrator made the following rulings:

- The CT claim is a separate and distinct injury and not a compensable consequence of the September 24, 2010 injury;
 - The October 14, 2011 specific injury is a separate and distinct injury and not a compensable consequence of the September 24, 2010 injury; and
 - PIPS is not entitled to prejudgment interest pursuant to Civil Code § 3287.

4 17. The Award has not been set aside or suspended by a competent
5 authority.

6 18. Pursuant to 9 U.S.C. § 9, Petitioner has brought this action within one
7 year after the Award was made on July 26, 2023.

COUNT ONE

(Confirm Arbitration Award)

0 19. Liberty repeats and realleges paragraphs 1 through 18 hereof, as if
1 fully set forth within.

2 20. The Award found that the CT claim is a separate and distinct injury
3 and not a compensable consequence of the September 24, 2010 injury.

4 21. The Award found that the October 14, 2011 specific injury is a
5 separate and distinct injury and not a compensable consequence of the September
6 24, 2010 injury.

7 22. The Award found that PIPS is not entitled to prejudgment interest
8 pursuant to Civil Code § 3287.

1 23. By reason of the foregoing, the court should issue an order
2 confirming the arbitration award annexed hereto as Exhibit A by Mark L. Kahn of
3 Altman, Blitstein & Blinder dated July 26, 2023, and direct that judgment be entered
4 thereon.

5 WHEREFORE, Liberty respectfully requests that this Court:

6 1. Issue an order pursuant to 9 U.S.C. § 9 confirming the arbitration
7 award annexed hereto as Exhibit B by Mark L. Kahn of Altman, Blitstein & Blinder
8 dated July 26, 2023.

9 2. Enter judgment thereon pursuant to 9 U.S.C. § 13.

10 3. Award Liberty such other and further relief as this Court deems just
11 and proper.

12 Dated: July 25, 2024

CLYDE & CO US LLP

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15 By: /s/ Yvonne M. Schulte
16 Yvonne M. Schulte
17 Bradley R. Harding
18 Attorneys for Plaintiff/Petitioner LIBERTY
19 INSURANCE CORPORATION
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PETITION TO CONFIRM ARBITRATION AWARD

Exhibit A

1 MARK L. KAHN, ARBITRATOR
2 ALTMAN, BLITSTEIN & BLINDER
3 A Professional Corporation
4 16255 Ventura Boulevard, Suite 1110
5 Encino, CA 91436-2319
6 (818) 995-0080

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**PROTECTED INSURANCE PROGRAM
FOR SCHOOLS & COMMUNITY
COLLEGES JOINT POWERS
AUTHORITY,**

CLAIMANT,

VS.

**LIBERTY INSURANCE CORPORATION,
RESPONDENT.**

ARBITRATOR'S FINDINGS

The above-captioned matter having been set for Arbitration on January 17, 2023, before Mark L. Kahn, Arbitrator, the parties having reached Stipulations, Issues and admitted Exhibits into evidence and have agreed to submit the matter on the present record,

The Arbitrator finds as follows:

FINDINGS

1. The Arbitrator finds the claim for the continuous trauma injury from August 2005 through October 14, 2011, is a separate and distinct injury and not a compensable consequence of the specific injury of September 24, 2010.

2. The Arbitrator finds the the claim for the specific injury of October 14, 2011 is a separate and distinct injury and not a compensable consequence of the specific injury of September 24, 2010.

3. The Arbitrator finds that the applicant sustained a specific injury on September 24, 2010, a specific injury on October 14, 2011, and a continuous trauma from August 2005 through October 14, 2011, all of which are separate and distinct injuries.

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1 4. The Arbitrator finds that regarding the issue if the claim for a continuous trauma
2 injury from August 2005 through October 14, 2011 is found to be a compensable consequence of
3 the specific injury of September 24, 2010, are the injuries and benefits covered by the terms of the
4 insurance policy issued by Liberty Mutual to PIPS, the Arbitrator does not decide this issue as the
5 Arbitrator found that the continuous trauma claim was not a compensable consequence of
6 September 24, 2010 injury, making this issue moot.

7 However, in the opinion of the Arbitrator, if the Arbitrator had found that the continuous
8 trauma claim was a compensable consequence of September 24, 2010, the Arbitrator would have
9 found the insurance policy issued by Liberty Mutual to PIPS would have covered the injuries and
10 benefits pursuant to the terms of the insurance policy.

11 5. The Arbitrator finds regarding the issue if the claim for a continuous trauma injury
12 from August 2005 through October 14, 2011 was found to be compensable consequence of the
13 specific injury of September 24, 2010, did PIPS release the claim by way of settlement, the
14 Arbitrator does not decide this issue as the Arbitrator found that the continuous trauma claim was
15 not a compensable consequence of September 24, 2010 injury, making this issue moot.

16 However, the Arbitrator, after reviewing the settlement agreement, is of the opinion that
17 the stipulation the parties entered pursuant to the terms of the insurance policy issued by Liberty
18 Mutual to PIPS, that a continuous trauma injury is only covered by the insurance policy if the
19 employee's last date of last exposure to those conditions causing or aggravating such bodily injury
20 by disease occurs during the policy period is the only issue PIPS released by way of the settlement
21 agreement between PIPS and Liberty Mutual.

22 6. The Arbitrator finds that PIPS is not entitled to prejudgment interest pursuant to
23 Civil Code Section 3287.

24 7. As to the issue of the Stipulations with Request for Award entered into between
25 PIPS and the applicant, C [REDACTED] E [REDACTED], being inconsistent with PIPS's position that the specific
26 injury of October 14, 2011, and the continuous trauma injury from August 2005 through October
27 14, 2011, are compensable consequences of the specific injury of September 10, 2010, the
28 Arbitrator finds this issue is moot based on the findings above.

1 However, the Arbitrator is of the opinion that PIPS is bound by their Stipulations and
2 Awards in the underlying workers' compensation case.

4 DATED: July 26, 2023

ALTMAN, BLITSTEIN & BLINDER

By: Mark L Kahn
MARK L. KAHN,
ARBITRATOR

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2 ALTMAN, BLITSTEIN & BLINDER
3 A Professional Corporation
4 16255 Ventura Boulevard, Suite 1110
5 Encino, CA 91436-2319
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10 **PROTECTED INSURANCE PROGRAM
FOR SCHOOLS & COMMUNITY
COLLEGES JOINT POWERS
AUTHORITY,**

11 **CLAIMANT,**

12 **VS.**

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14 **LIBERTY INSURANCE CORPORATION,**
15
16 **RESPONDENT.**

17 **ARBITRATOR'S OPINION ON
DECISION**

18 The above-captioned matter having been set for Arbitration on January 17, 2023, before
19 Mark L. Kahn, Arbitrator, the parties having reached Stipulations, Issues and admitted Exhibits
20 into evidence and have agreed to submit the matter on the present record,

21 **APPEARANCES:**

22 Clyde & Co US LLP by Yvonne Schulte, Esq. for Liberty Insurance Corporation
23 (“Liberty”).

24 Haverkamp Law Firm, A Professional Corporation by Albert Haverkamp, Esq. for
25 Protected Insurance Program for Schools & Community Colleges Joint Powers Authority
26 (“PIPS”).

27 1. PIPS is a statutory joint powers authority which provides and administers a self-
28 insurance program for workers' compensation claims involving its members, California school
districts and other educational organizations, each of which self-insured pursuant to Labor Code
§3700(c).
29 // /

1 2. Liberty issued to The Protected Insurance Program (PIPS) and its members, an
2 Excess Insurance Policy for Self-Insurer of Workers' Compensation Employer's Liability, policy
3 number EW7-64N-441320 -010, effective from July 1, 2010 through July 1, 2011.

4 3. The Liberty policy provides that Liberty will reimburse members "for loss as a
5 qualified self-insured under the workers' compensation law," in excess of a \$100,000 retention,
6 subject to a \$900,000 limit and its other terms, conditions, limitations and exclusions. In order for
7 there to be coverage for "bodily injury by disease" causing cumulative injury, the employee's last
8 day of last exposure to those conditions causing or aggravating such bodily injury by disease must
9 occur during the policy.

10 4. Pursuant to the terms of the policy issued by Liberty to PIPS, bodily injury by
11 accident is covered only if bodily injury by accident occurs during the policy period according to
12 the terms of the policy issued by Liberty.

13 5. C [REDACTED] E [REDACTED] suffered a specific injury on September 24, 2010, a specific injury
14 on October 14, 2011, and a continuous trauma claim from August 2005 through October 14, 2011.
15 The claim for the specific injury on September 24, 2010 is covered by the insurance policy issued
16 by Liberty, subject to the terms, conditions, and limitations of the policy. The injury of October
17 14, 2011, and the continuous trauma injury, fall outside the period of coverage for the insurance
18 policy issued by Liberty.

19 6. Applicant and PIPS entered into Stipulations with Request for Award for a specific
20 injury on September 24, 2010 to applicant's right shoulder and psyche (case [REDACTED]) a
21 specific injury on October 14, 2011 to applicant's left shoulder and psych (case [REDACTED]) and
22 a cumulative trauma injury from August 2005 through October 14, 2011 to applicant's bilateral
23 wrists, bilateral hands, psyche, back, and neck (case [REDACTED]).

24 7. Liberty is liable to reimburse PIPS for covered loss in connection with the specific
25 injury of September 24, 2010, subject to the other terms, conditions, and limitations of the policy,
26 and in excess of a \$100,000 retention, regardless of when benefits are payable, even if the benefits
27 are payable after the policy if the employees last date period contained in the insurance policy
28 issued to PIPS by Liberty.

1 8. The parties stipulate that pursuant to the terms of the insurance policy issued by
2 Liberty to PIPS, a continuous trauma injury is only covered by the insurance policy if the
3 employee's last date of last exposure to those conditions causing or aggravating such bodily injury
4 by disease occurs during the policy period.

5 9. The parties stipulate that PIPS and Liberty entered into a settlement agreement
6 dated April 1, 2019, wherein PIPS released "any and all cumulative injury claims ('CT Claims')
7 wherein the claimant's last day of last exposure ('LDLE') to those conditions causing or
8 aggravating the cumulative injury occurred after the expiration date of the Liberty Policy, July 1,
9 2011."

10 **ISSUES**

11 1. Is the claim for the continuous trauma injury from August 2005 through October
12 14, 2011, a compensable consequence of the specific injury of September 24, 2010, or a separate
13 and distinct injury?

14 2. Is the claim for the specific injury of October 14, 2011 a compensable consequence
15 of the specific injury of September 24, 2010 or a separate and distinct injury?

16 3. If the claim for a continuous trauma injury from August 2005 through October 14,
17 2011 is found to be a compensable consequence of the specific injury of September 24, 2010, are
18 the injuries and benefits covered by the terms of the insurance policy issued by Liberty to PIPS?

19 4. If the claim for a continuous trauma injury from August 2005 through October 14,
20 2011 is found to be compensable consequence of the specific injury of September 24, 2010, did
21 PIPS release the claim by way of settlement?

22 5. If the claim for the specific injury of October 14, 2011 is found to be a compensable
23 consequence of the specific injury of September 24, 2010, are the injuries and benefits covered by
24 the terms of the insurance policy issued by Liberty to PIPS?

25 6. Is PIPS entitled to prejudgment interest pursuant to Civil Code Section 3287?

26 7. Is the Stipulations with Request for Award entered into between PIPS and the
27 applicant, C [REDACTED] E [REDACTED], inconsistent with PIPS's position that the specific injury of October
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1 14, 2011, and the continuous trauma injury from August 2005 through October 14, 2011, are
2 compensable consequences of the specific injury of September 24, 2010?

3 **EXHIBITS OF LIBERTY**

- 4 A. Liberty Policy Number EW7-64N-441320-010 (July 1, 2010 through July 1, 2011).
5 B. Executed settlement agreement between Liberty and PIPS dated April 1, 2019.
6 C. Medical report of Mark Ganjianpour, M.D. dated October 20, 2011.
7 D. Medical report of Mark Ganjianpour, M.D. dated November 16, 2011.
8 E. Portion of transcript of C [REDACTED] H [REDACTED] dated August 14, 2012.
9 F. Stipulations with Request for Award dated September 16, 2019.
10 G. Medical reports of David Kauss, Ph.D. dated May 3, 2012, December 22, 2014,
11 March 25, 2015 and September 3, 2015.

12 **EXHIBITS OF FOR PROTECTED INSURANCE PROGRAM FOR SCHOOLS &**
13 **COMMUNITY COLLEGES JOINT POWERS AUTHORITY**

- 14 1. Deposition transcript of Steven Silbart, M.D. taken April 26, 2021.
15 2. Medical report of Steven Silbart, M.D. dated May 25, 2018.
16 3. Medical report of Stephen Silbart, M.D. dated May 14, 2018.
17 4. Stipulations with Request for Award dated September 16, 2019.
18 5. Medical report of Mark Ganjianpour, M.D. dated October 20, 2011.
19 6. Medical report of Mark Ganjianpour, M.D. dated August 10, 2011.
20 7. Medical report of David Friedman, M.D. dated September 24, 20018.
21 8. Medical report David Friedman, M.D. dated February 6, 2018.
22 9. Payment List for Claim 439637 (September 24, 2010, specific injury)
23 10. Payment Claim 533389 (October 14, 2011, specific injury)
24 11. Payment Listing for claim 533388 (continuous trauma injury through October 14,
25 2011).
26 12. Payment listing for claim 457873 (initial claim number for the October 14, 2011,
27 specific injury. (All payments for claim number 457873 have been transferred to 439637, 533389
28 and 533388).

13. Summary of the list of Payments prior to October 14, 2011, on claim 439637.

2 **ARGUMENT OF PROTECTED INSURANCE PROGRAM FOR SCHOOLS &**
3 **COMMUNITY COLLEGES JOINT POWERS AUTHORITY**

4 1. The best medical evidence on the issue of apportionment between the three inter-
5 related industrial injuries, the specific injury of September 24, 2010, the specific injury of October
6 14, 2011, and the continuous trauma injury from August 2005 through October 14, 2011 is the
7 medical reports and deposition testimony of Dr. Silbart.

8 2. Dr. Silbart found continuous trauma injury from August 2005 through October 14,
9 2011 was partially a compensable consequence of the September 24, 2010 injury and was partially
10 a separate and distinct injury and the October 14, 2011 specific injury was also a partially
11 compensable consequence of the September 24, 2010 injury and partially a separate and distinct
12 injury.

13 3. On September 24, 2010, the applicant sustained a specific injury to his right
14 shoulder and cervical spine. Dr. Ganjianpour reported the applicant had subjective complaints of
15 pain in the neck which radiated from the right shoulder, frequent headaches which he associated
16 with neck pain and stiffness and pain in the neck. He diagnosed the applicant with the cervical
17 spine strain/sprain will allow possible disc herniation, right shoulder rotator cuff tear, tension
18 headaches most likely related to the neck and right shoulder, inability to sleep due to the pain.

19 4. The applicant had right shoulder surgery on January 11, 2011.

20 5. The applicant returned to work on May 24, 2011.

21 6. From May 2011 through October 14, 2011, the applicant was working favoring his
22 right shoulder, therefore, using his left shoulder more than usual. During this time frame, the
23 applicant was regularly exceeding his work restrictions.

24 7. On October 14, 2011, the applicant sustained an injury to the left shoulder, cervical
25 spine, lumbar spine and wrists.

26 8. The applicant had left shoulder surgery on February 25, 2014.

27 9. Dr. Silbart in his report of May 25, 2018 apportions the right shoulder to the
28 September 24, 2010 specific injury, left shoulder, bilateral wrist and lumbar spine to both the

1 October 14, 2011 specific injury and the continuous trauma, the cervical spine only to the
2 continuous trauma injury.

3 10. Dr. Silbart in his report of May 25, 2018, apportions the right shoulder only to
4 September 24, 2010 specific injury, the left shoulder to the October 14, 2011 specific injury, and
5 the cervical cervical spine, lumbar spine, bilateral wrists the continuous trauma injury.

6 11. The medical reports of Dr. Silbart did not take into account the applicant was
7 favoring his right shoulder causing him to overuse his left shoulder prior to and on October 14,
8 2011. It does not make sense to apportion the cervical spine injury only to the October 14, 2011
9 continuous trauma injury when the cervical spine was significantly injured in the September 24,
10 2010 specific injury. Reports do not have an analysis of the combined impact/effect which
11 applicant's overuse the left arm, avoidance of the cervical pain, and exceeding work restrictions
12 had on the development of the lumbar spine and bilateral wrist pain. In order to clarify these
13 apportionment issues with Dr. Silbart, PIPS took the physician's deposition on April 26, 2021.

14 12. Dr. Silbart in his deposition testimony as to apportionment found left shoulder 66%
15 attributed to the September 24, 2010 specific injury and 33.4% to the specific injury of October
16 14, 2011. As to the wrists, 33.4% was attributed to the September 24, 2010 specific injury is a
17 compensable consequence and 66.6 % to the October 14, 2011 continuous trauma injury. As to the
18 lumbar spine, 66.6% attributed to a compensable consequence of the September 24, 2010 injury
19 and 33.4% to the October 14, 2011 continuous trauma injury. Although Dr. Silbart was not
20 specifically asked about apportionment of the cervical spine, his testimony indicates
21 apportionment would be the same as for the lumbar spine.

22 13. Dr. Ganjianpour, in his report of November 16, 2011, finds the left shoulder,
23 bilateral hands and lumbar spine are related to the October 14, 2011 injury. The physician noted
24 the applicant did have another injury prior to this to the right shoulder and the cervical spine. The
25 new injury did not involve previous body parts. Therefore, there is no apportionment to the
26 previously injured body parts with regard to the current injury.

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1 14. Dr. Roberts apportioned the neck to the specific injury of September 24, 2010, the
2 injury to both shoulders on September 24, 2010, the lumbar spine was apportioned to the specific
3 injury of October 14, 2011.

4 15. Dr. Silbart opinions on apportionment should be given the greatest weight because
5 he was chosen by the parties to act as Agreed Medical Evaluator and he was the only physician to
6 consider the evidence of favoring the right shoulder, overuse of the left shoulder and of exceeding
7 work restrictions in coming to his apportionment conclusions.

8 16. As to the psychiatric portion of the claim, the applicant sought no psychiatric
9 treatment between September 24, 2010 and October 14, 2011. The applicant told Dr. Kauss he
10 was depressed and anxious in that timeframe due to the chronic pain and physical limitations.

11 17. Consensus of the applicant's psychiatrist was that his psychiatric disability was
12 100% attributable to the orthopedic injuries he sustained on September 24, 2010 and October 14,
13 2011. As to apportionment between the injuries, Dr. Kauss and Dr. Friedman found the injuries
14 too intertwined to separate. Dr. Scheinbaum believed psychiatric apportionment amongst the
15 industrial injury should follow the orthopedic apportionment. None of these doctors had an
16 opportunity to review Dr. Silbart's deposition testimony on apportionment between the three
17 interrelated industrial injuries. PIPS suggest the psychiatric component should follow Dr. Silbart's
18 final apportionment amongst the three interrelated industrial injuries.

19 18. Dr. Silbart's deposition testimony establishes that both the October 14, 2011
20 specific and the continuous trauma injury from August 2005 through October 24, 2011 are partially
21 compensable consequences of the September 24, 2010 specific injury and partially separate and
22 distinct injuries. To that extent, they are deemed separate and distinct injuries and there is no
23 coverage under the Liberty policy. To the extent they are deemed compensable consequences of
24 the September 24, 2010 specific injury, they are covered.

25 19. In his deposition, Dr. Silbart provides an apportionment among the three
26 interrelated industrial injuries. This is exactly the type of apportionment analysis which is required
27 to determine reimbursement under an excess workers' compensation policy.

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1 20. Liberty appears to agree with the premise that there needs to be an apportionment
2 amongst inter-related industrial injuries in order to determine whether and to what extent
3 reimbursement is owed by an insurer. What bothers Liberty is Dr. Silbart's use of the compensable
4 consequence concept as the basis for his apportionment. Liberty's objections to the compensable
5 consequence concept are unfounded and Dr. Silbart's 2021 deposition testimony should be viewed
6 as straightforward apportionment between the three inter-related industrial injuries.

7 21. A compensable consequence involves a causal nexus between a primary industrial
8 injury and a new and distinct injury such as the subsequent injury is a direct result of the
9 compensable primary injury. If so, the secondary incident is not considered a new and independent
10 injury and relates back to the original injury.

11 22. The Liberty policy covers compensable consequences. The policy states as
12 follows: "We will indemnify you for loss as a qualified insurer under the workers' compensation
13 law" Endorsement # 10 to the policy provides, "Loss means amount you have actually paid as a
14 self-insurer under the workers' compensation law plus any expenses....". If, pursuant to a Liberty
15 covered industrial injury, PIPS has to pay compensable consequence benefits attributed to the
16 covered primary industrial injury, those benefits would fall under the above-referenced definition
17 of "loss" and would be reimbursable.

18 23. Liberty contends compensable consequences are a workers' compensation concepts
19 that do not apply to the policy. According to Liberty, this somehow results in compensable
20 consequence benefits not being reimbursable. This contention misses the point and misconstrues
21 the policy. While workers' compensation concepts do not apply directly to the policy to dictate
22 coverage, workers' compensation concepts apply to PIPS. The application of California workers'
23 compensation law concepts to PIPS is what establishes the amount of benefits PIPS has to pay,
24 which also establishes the amount of PIPS's loss for purposes of reimbursement. Thus, PIPS
25 payment of workers' compensation benefits associated with a compensable consequence injury
26 attributed to a Liberty covered primary industrial injury is a reimbursable loss under the policy.

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1 24. Liberty sites to the case for the propositions court should not impose an obligation
2 on insurer that contravenes a provision in its insurance policy. Here, PIPS only seeks to enforce
3 an obligation to reimburse the applicant for benefits which are explicitly reimbursable under the
4 policy. There is no part of the policy which contravenes the obligation reimburse.

5 25. To the extent the injuries left shoulder, cervical spine, lumbar spine and wrists are
6 deemed compensable consequences of the September 24, 2010 specific injury, the benefits paid
7 by PIPS for those body parts constitute reimbursable “loss” associated with the covered September
8 24, 2010 specific injury. To the extent the injuries to the left shoulder, cervical spine, lumbar spine
9 and wrists are deemed separate and distinct workers’ compensation injuries, the benefits paid by
10 PIPS for those body parts cannot be reimbursable.

11 26. Regarding the issue of whether the continuous trauma is found to be a compensable
12 consequence of the specific injury of September 24, 2010 and if so did PIPS release this claim by
13 way of settlement with Liberty in 2019, the facts show that Liberty and PIPS settled the lawsuit
14 on April 1, 2019. The settlement included an agreement by PIPS to not seek reimbursement from
15 Liberty from any other continuous trauma claims where the last date of last exposure was outside
16 the Liberty policy. The scope of the release in his settlement agreement has no impact on PIPS’s
17 claims in this Arbitration. PIPS admits there is no coverage for the August 2005 through October
18 14, 2011 continuous trauma claims and PIPS is not seeking coverage from Liberty for this
19 continuous trauma based on Labor Code §5500.5. PIPS is only entitled to reimbursement from
20 Liberty to the extent the latter sustained injuries are found to be apportionment to the September
21 24, 2010 specific injury is a compensable consequence.

22 27. As to the issue is PIPS entitled to prejudgment interest pursuant to Civil Code
23 Section 3287, they indicate the primary purpose of that section is to provide just compensation to
24 the injured party for loss of use of the underlying award during the prejudgment. In other words,
25 to make the plaintiff whole as of the date of injury. Courts generally apply a liberal construction
26 in determining whether a claim is certain or liquidated. The test for determining certainty is
27 whether the defendant knew the amounts of damages owed to the claimant could have computed
28 the amount from reasonable available information. Uncertainty as to liability is irrelevant, as the

1 dispute concerning liability does not preclude prejudgment interest in a civil action. The certainty
2 required by Section 3287(a) is not lost when the existence of liability turns on disputed facts, but
3 only when the amount of damages turns undisputed facts.

4 28. Liberty contends PIPS is not entitled to prejudgment interest because the amount
5 PIPS is seeking is disputed. However, PIPS submitted information to Liberty from which Liberty
6 could have calculated the reimbursement owed. In insurance coverage cases, courts have applied
7 an even greater liberal construction in determining whether a claim is certain for purposes of
8 prejudgment interest.

9 29. If there is an ambiguity in the construction of the California statute, PIPS believes
10 the Supreme Court in California would be persuaded that, particularly insurance cases, when all
11 the information has been submitted from which the loss may be calculated, the insured should not
12 be deprived of the use of the amount determined to be due because of a dispute or the meaning of
13 a policy term. Moreover, the insurance company should not occur any loss by being required to
14 pay prejudgment interest from the date it was furnished with appropriate data, because it has had
15 the use of the money while the dispute over the policy terms have been litigated.

16 30. In this case, PIPS provided Liberty detailed payment listings of each claim which
17 itemized every benefit and claim expense paid on each claim. Liberty does not dispute these
18 amounts. Liberty disputes liability, that any further reimbursement is owed based on two primary
19 assertions: the October 14, 2011 specific and the October 14, 2011 continuous trauma are not
20 compensable consequences of the September 24, 2010 specific injury and even if they are
21 compensable consequences there is no coverage under the policy. Liberty could have reasonably
22 calculated to reimbursement owed if it had acknowledged the specific and the continuous trauma,
23 in part, for compensable consequences of the September 24, 2010 specific injury. Liberty has
24 chosen to rely on its no liability arguments is the basis to withhold reimbursement. It is not fair
25 for Liberty to have the benefit of reimbursement amounts owed since 2016 if Liberty's liability
26 position does not prevail.

27 31. As to the issue whether the Stipulations with Request for Award entered into
28 between PIPS and the applicant is inconsistent with PIPS's position that the specific injury of

1 October 14, 2011 and the continuous trauma injury from August 2005 through August 14, 2011
2 are compensable consequence is a specific injury September 14, 2010. The issue of whether the
3 October 14, 2011 specific injury and the August 2005 through August 14, 2011 continuous trauma
4 are partially compensable consequences of the September 24, 2010 specific injury turns on medical
5 evidence. The Stipulations are not medical evidence, they merely reflect the negotiations of
6 counsel concerning resolution of the permanent disability rating, life pension and identifying the
7 body parts for which future medical care will be provided. The Stipulations parsing of the body
8 parts amongst the three interrelated injuries is just a reflection of the machinations of counsel to
9 achieve these resolutions. Since these are not medical records, Stipulations are largely immaterial
10 to the issue of whether the October 14, 2011 specific injury and the August 2005 through August
11 14, 2011 continuous trauma are partially compensable consequences of the September 24, 2010
12 specific injury.

13 32. The Stipulations indicate the cervical spine was not injured on September 24, 2010.
14 This is incorrect. Second Stipulations ignore the evidence of the right shoulder favoring left
15 shoulder overuse. Third Stipulations do not account for the evidence of exceeding work
16 restrictions. Fourth, the Stipulations incorrectly state that Dr. Silbart found the three injuries were
17 inextricably intertwined, and asked the doctor did not do so. Finally, the Stipulations were entered
18 into before the deposition of Dr. Silbart concerning compensable consequence and apportionment.
19 Simply stated, the Stipulations are not medical and are inconsistent with the actual medical
20 evidence.

21 33. It should also be noted that the issue of compensable consequence/apportionment
22 amongst three injuries for purposes of coverage under Liberty's excess policy was not an issue in
23 the workers' compensation proceedings. A WCAB preceding does not have jurisdiction to
24 adjudicate coverage issues involving an excess workers' compensation policy in case law shows
25 the WCAB Stipulations settlements are inconsequential with respect to coverage disputes between
26 self-insured employers and its excess insurer.

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1 34. The Stipulations are not medical evidence and are immaterial with respect to the
2 issue of whether the injuries the left shoulder, cervical spine and wrists are properly apportioned
3 in part to the September 24, 2010 specific injury as a compensable consequence.

4 **ARGUMENT OF LIBERTY**

5 1. The Protected Insurance Program (“PIPS”) is a statutory joint power authority
6 which provides and administers a self-insurance program for workers’ compensation claims
7 involving its members, California school districts and other educational organizations, each of
8 which is self-insured pursuant to California Labor Code §3700(c).

9 2. PIPS initially sued Liberty on June 4, 2018 over to claims not at issue here. PIPS
10 and Liberty settled and executed a settlement agreement in 2019. In that agreement, PIPS released
11 “any and all cumulative injury claims (“CT Claims”) where in the claimant’s last day of last
12 exposure to those conditions causing or aggravating the cumulative injury occurred after the
13 expiration date of Liberty’s policy, July 1, 2011.

14 3. The policy is not a workers’ compensation policy. Labor Code §5500 does not
15 control the policy or the 2019 Agreement, and the Workers’ Compensation Appeals Board does
16 not have jurisdiction over the issues in this case. Labor Code §5500 is limited disputes involving
17 workers’ compensation benefits to an employee. An excess workers’ compensation policy
18 reimburses employers and pays no benefits to employees, is not a workers’ compensation policy,
19 is not subject to the Labor Code.

20 4. The insurance policy issued by Liberty provides that it will reimburse PIPS for loss
21 as a qualified self-insurer under the workers’ compensation law, in excess \$100,000 retention,
22 subject to a \$900,000 limit and its other terms, conditions, limitations and exclusions. Subject to
23 its terms and conditions, the policy covers loss arising from bodily injury by accident or bodily
24 injury by disease. For bodily injury by disease causing cumulative injury, the employees to those
25 conditions causing or aggravating such bodily injury by disease must occur during the policy. In
26 order for there to be coverage under the policy, bodily injury by accident is covered only bodily
27 injury by accident occurs during the policy.

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1 5. PIPS now seeks coverage for three workers' compensation claims asserted by
2 C [REDACTED] e H [REDACTED]. C [REDACTED] e E [REDACTED] a suffered a specific injury on September 24, 2010, another
3 injury on October 14, 2011, and a continuous trauma claim from August 2005 through August 14,
4 2011.

5 6. PIPS concedes there is no coverage for the 2011 claim for the continuous trauma
6 claim under the policy. Furthermore, PIPS released H [REDACTED]'s continuous trauma claim waive any
7 and all cumulative injury claims wherein the claimant's (LDLE) to those conditions causing or
8 aggravated occurred after the expiration date of Liberty's policy.

9 7. According to PIPS, 70% of H [REDACTED]'s treatment/benefits after October 14, 2011 are
10 attributed to the September 24, 2010 injury. PIPS claims that such treatment is attributable to the
11 2011 claim because it was a compensable consequence under California workers' compensation
12 law. The 2011 and continuous trauma claims are not compensable consequence in the 2010 claim.
13 The continuous trauma claim began years before the 2010 claim, in August 2005. In 2011, H [REDACTED]
14 was injured when he was lifting heavy bags outside of his restrictions. In doing so, H [REDACTED] suffered
15 a separate, discrete injury performing work duties after the termination of the policy.

16 8. However, even if the 2011 and the continuous trauma claims are compensable
17 consequences under workers' compensation law, they are not covered under the policy pursuant
18 to California law. The insurance policy issued by Liberty provides that they must reimburse PIPS
19 only for claim expenditures caused by an injury that the policy covers. PIPS argues compensable
20 consequence is under California workers' compensation law requires coverage, but this concept
21 does not apply here.

22 9. The insurance policy only covers injury by accident occurring during the policy
23 period. The 2011 claim occurred on October 14, 2011. The policy terminated on July 1, 2011.
24 There is no coverage for any treatment for the 2011 claim.

25 10. The policy applies only to bodily injury by disease, including cumulative trauma,
26 when the LDLE occurred during the policy. The last day of the continuous trauma claim was
27 October 14, 2011, so there is no coverage for any of the treatment for the continuous trauma claim.

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1 11. Labor Code §5500 does not apply to the policy. The policy language controls.
2 Section 5500.5 does not apply to the instant case because an express policy is not a workers'
3 compensation policy and thus, cannot be subject to Division Four of the Labor Code, the part of
4 the Labor Code in which section 5500.5 appears. PIPS released E [REDACTED] s claim in the 2019
5 Agreement.

6 12. PIPS argues apportionment based on the workers' compensation theory of
7 compensable consequence, arguing that all (100%) of the treatment for E [REDACTED] s right shoulder is
8 attributable to the 2011 claim. PIPS asserts that two-thirds of the treatment for the left shoulder is
9 attributable to the 2010 claim because it is a compensable consequence. The 2011 claim is not a
10 compensable consequence of the 2010 claim under workers' compensation law because it arises
11 out of arduous duties from reassignment to grounds in excess of his restrictions. But even if it
12 were, the policy covers not of the treatment for the 2011 claim because the bodily injury did not
13 occur during the policy period. The bodily injury giving rise to the 2011 claim occurred after the
14 policy expired and no coverage treatment for the claim exists.

15 13. PIPS argues that 1/3 of E [REDACTED] s treatment for the wrists and 2/3 of the treatment
16 for his spine should be attributed to the 2010 claim because they are a compensable consequence
17 to the 2010 claim. None of the medical treatment for the continuous trauma claim is covered under
18 the policy because it only covers claims or cumulative trauma when the employees LDLE occurs
19 during the policy. Here, PIPS concedes that the LDLE occurred after the Liberty policy expired.
20 Again, PIPS expressly released all such continuous trauma claims in the 2019 Agreement.

21 14. Liberty notes that although it is not bound by the Stipulations in this matter, PIPS's
22 physician contradicts the WCAB Stipulations, which dismissed all body parts of the right shoulder
23 2010 claim. Despite the Stipulations entered, PIPS now tries to assert after, develop theories to
24 improperly allocate treatment for other injuries to the 2010 claim. However, the policy does not
25 afford coverage 2011 continuous trauma claim.

26 15. PIPS also argues that the psychiatric allocation should follow this 70%
27 apportionment and request a global orthopedic apportionment of 70% to the 2010 claim. This is
28 wrong because PIPS attempts to assign apportionment to Liberty's two uncovered claims, the 2011

1 and continuous trauma claim. Pursuant to the terms of the Liberty policy, well-established
2 California law, and the release provided by PIPS for amounts incurred for treatment of the 2011
3 claim, they are in excess of PIPS \$100,000 SIR. Moreover, psychiatric allocation is wrong because
4 it did not occur until after termination of the policy. Records demonstrate the psychiatric
5 component occurred as a result of the compound nature of all injuries, which occurred as a result
6 of the failure to work within restrictions, as well as E█████ stress because his employer would
7 not respect his restrictions, and because he was eliminated from his employment. Thus, none of
8 the psychiatric treatment should be allocated to the 2010 claim.

9 16. As confirmed in PIPS's brief, Liberty has reimbursed PIPS \$54,881.89 in excess of
10 the \$100,000 SIR for the 2010 claim. To recover more, PIPS must show that all loss for the 2010
11 claim, right shoulder, exceeds \$154,881.89. It has not and cannot do so. In fact, Liberty believes
12 it may have paid in excess amounts owed.

13 17. PIPS has not demonstrated that it is owed additional amounts. It failed to
14 demonstrate that Liberty breached the terms of the policy.

15 18. PIPS is also not entitled prejudgment interest. Civ.C. §3287 provides: Every person
16 who is entitled to recover damages certain, or capable of being made certain by calculation, right
17 to recover which is vested in him upon a particular day is entitled also to recover interest thereon
18 from that day. Under Civ.C. § 3287, damages are deemed certain when, through the parties'
19 disputed liability, the essentially do not dispute the commutation of damages, if any. An award of
20 prejudgment interest is improper where facts essential to coverage are in dispute. But where the
21 only dispute is a legal one, an award prejudgment interest is proper.

22 19. When benefits due under the policy are unliquidated, the insured has no right to
23 prejudgment interest until the amount of loss is settled or determined. Interest traditionally has
24 been denied on unliquidated claims because of the general equitable principle that a person who
25 does not know what sum is owed cannot be in default for will failure pay. The amount PIPS seeks
26 is in dispute as Liberty contends it currently owes, nothing further.

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1 20. Finally, PIPS is not entitled to declaratory relief that Liberty has an obligation to
2 pay 70% of all future claim expenditures, as Liberty has an obligation to pay future claim
3 expenditures, if any, for the 2010 claim.

4 **FACTS**

5 1. Liberty issued to The Protected Insurance Program (PIPS) and its members, an
6 Excess Insurance Policy for Self-Insurer of Workers' Compensation Employer's Liability, policy
7 number EW7-64N-441320 -010, effective from July 1, 2010 through July 1, 2011.

8 2. The Protected Insurance Program (PIPS) is a statutory joint powers authority which
9 provides and administers a self-insurance program for workers' compensation claims involving its
10 members, California school districts and other educational organizations, each of which self-
11 insured pursuant to Labor Code §3700(c).

12 3. C [REDACTED] E [REDACTED] suffered a specific injury on September 24, 2010. Dr. Mark
13 Ganjipour in his report of August 10, 2011, reports that the applicant on September 24, 2010,
14 while performing his customary duties as a maintenance man and as he was going over a fence,
15 experienced a popping sensation in his right shoulder. He had immediate pain and feeling of
16 dislocation. The applicant had surgery on January 11, 2011. The physician's impression was that
17 the applicant was status post right shoulder rotator cuff repair, as well as distal clavicle resection,
18 January 2011, cervical spine sprain/strain and inability to sleep, resolved after the shoulder
19 condition had improved. Based on the available information, the physician concluded that the
20 current symptoms for the right shoulder were caused by the injury he sustained on September 24,
21 2010. The apportionment was 100% disability to that injury. The applicant was given a work
22 restriction of maximum lifting up to 15 pounds at no work at or above shoulder level on the right
23 side.

24 4. C [REDACTED] E [REDACTED] suffered a specific injury on October 14, 2011. The applicant
25 testified in his deposition that on October 14, 2011, he was working on a football field and was
26 filling up bags with rubber and was putting the bags on the electric cart and was taking them out
27 to dump them in a larger container. Because he was shoveling a lot, putting that rubber into the
28 bags and bags in the cart, he felt an injury to his shoulder. He felt pain in his shoulder, while

1 shoveling and lifting the bags, in his left shoulder and both wrists. Dr. Mark Ganjianpour in his
2 report of November 16, 2011, reported the applicant sustained an injury on October 14, 2011,
3 while employed as a maintenance man. The applicant stated he sustained injuries on October 14,
4 2011, while in the process of removing artificial turf from the playing field on campus. He was
5 placing the artificial turf into rubber trash bags that were provided to him and then placed the bags
6 on the back of an electrical cart to be transported to a trash bin. As the applicant lifted one of the
7 bags, he felt a sharp pain in his left shoulder, left elbow, both wrists and lower back. He relates
8 he had only performed this task for about an hour or so when he experienced the pain. The
9 applicant reported the injury to his employer. The applicant went for medical attention. The
10 applicant reported complaints to the left shoulder, left wrist, right knee, lower back and psyche.
11 The physician concluded that based on the applicant's history and the physical exam and x-rays,
12 he believed the applicant's current complaints to the left shoulder, bilateral hands and lumbar spine
13 were related to the October 14, 2011 injury. The physician indicated that it should be noted the
14 applicant did have another injury prior to the right shoulder and cervical spine. The new injury
15 did not involve the previous body parts. Therefore, there is no apportionment to previously injured
16 body parts with regard to the current injury. It should be noted that the applicant is complaining
17 of anxiety and depression. The primary treating physician recommended the applicant see a
18 psychiatrist or psychologist to determine whether the injury was related to work.

19 5. C [REDACTED] E [REDACTED] a suffered a continuous trauma from August 2005 through October
20 14, 2011. Dr. Mark Ganjianpour in his report of October 20, 2011, reports that the applicant comes
21 in regarding flareup of his injuries. The applicant states to compensate for his right shoulder, he
22 has been using his left shoulder more than usual, which has caused pain in his left shoulder. The
23 physician explained to the applicant that the lumbar spine, the left shoulder and wrists are not
24 under the claim at this time. Therefore, he was unable to treat the applicant. Dr. Steven Silbart in
25 his report of May 14, 2018, finds continuous trauma injury while the applicant was working at
26 Beverly Hills Unified School District beginning in August 2005. The applicant states that around
27 September 24, 2010, he sustained an injury. The applicant was trying to go on top of the fence, he
28 pulled himself up, holding on to the bleachers, at which time, he felt pain in his right shoulder.

1 The applicant states that on October 14, 2011, he was shoveling fragments of turf from the field
2 and loading them into a utility cart when he started to notice discomfort in his left shoulder, wrist
3 hands and low back. The applicant was present with symptoms to the cervical spine, right
4 shoulder, left shoulder, wrists, hands, lumbar sacral spine and cervical spine. The physician
5 indicated he was evaluating the applicant for a specific injury on September 24, 2010, October 14,
6 2011, as well as a continuous trauma injury. The physician finds an industrial injury to the neck,
7 low back, and both wrists as a result of the continuous trauma injury. Dr. Steven Silbart in his
8 report of May 25, 2018, finds as to the cervical and lumbar disability, he apportioned 85% to
9 continuous trauma injury. He did not find apportionable lumbar disability relative to the October
10 14, 2011 specific injury. With respect to the wrist, 70% is apportioned to the continuous trauma
11 injury. With respect to the right shoulder disability is all apportioned to the September 24, 2010
12 specific injury and the left shoulder is apportioned entirely to the October 14, 2011 specific injury.

13 6. As to the psychiatric portion of the case, the applicant was evaluated by David L.
14 Friedman, M.D. Dr. Friedman as to causation found the emotional impact of the industrial
15 orthopedic injuries was the predominant cause of applicant's injury and major depression. As to
16 apportionment, the physician found 100% of the psychiatric impairment was attributable to
17 industrial sources. The physician for the emotional impact of the industrial orthopedic injuries of
18 September 24, 2010 and October 14, 2011 was predominant among all causes combined and
19 causation of the injury. The physician apportioned 30% to the lasting emotional effect of decrease
20 in hours, and other alleged retaliatory behaviors on the part of the employer early in 2013 and the
21 June 2013 layoff; compensability deferred to the trier-of-fact. The remaining 70% of the
22 permanent psychiatric impairment is due to the impact of the orthopedic injuries and impairment.
23 As to *Benson*, the physician found two specific injuries and the continuous trauma injury, the
24 physician found the exception to *Benson* applies (disability cannot be parceled out between the
25 three injuries), therefore, 100% of the permanent psychiatric disability is due to the emotional
26 impact the orthopedic injuries and disability and is attributable to the combined effects of all three
27 dates of injury. David R. Kauss, Ph.D. found the applicant's psychiatric condition was caused by
28 the orthopedic injuries and all three entries were intertwined and could not be separated out.

1 7. Applicant and PIPS entered into a joint Stipulations with Request for Award cases
2 [REDACTED], [REDACTED], and [REDACTED] for 82% permanent disability which were
3 approved by the Appeals Board on September 16, 2019. Case number [REDACTED] was
4 Stipulations and Request for Award for a specific injury on September 24, 2010 to applicant's
5 right shoulder and psyche. Case number [REDACTED] was Stipulations with Request for Award
6 for a specific injury on October 14, 2011 to applicant's left shoulder and psyche. Case number
7 [REDACTED] Stipulations with request for Award for a cumulative trauma injury from August
8 2005 through October 14, 2011 to applicant's bilateral wrists, bilateral hands, psyche, back and
9 neck.

10 8. Liberty issued to The Protected Insurance Program (PIPS) and its members, an
11 Excess Insurance Policy for Self-Insurer of Workers Compensation Employer's Liability, policy
12 number EW7-64N-441320 -010, effective from July 1, 2010 through July 1, 2011.

13 9. The Liberty policy provides that Liberty will reimburse members "for loss as a
14 qualified self-insured under the workers' compensation law," in excess of a \$100,000 retention,
15 subject to a \$900,000 limit and its other terms, conditions, limitations and exclusions. In order for
16 there to be coverage for "bodily injury by disease" causing cumulative injury, the employee's last
17 day of last exposure to those conditions causing or aggravating such bodily injury by disease must
18 occur during the policy.

19 10. Pursuant to the terms of the policy issued by Liberty to PIPS, bodily injury by
20 accident is covered only if bodily injury by accident occurs during the policy period according to
21 the terms of the policy issued by Liberty.

22 11. The claim for the specific injury on September 24, 2010 is covered by the insurance
23 policy issued by Liberty, subject to the terms, conditions, and limitations of the policy. The injury
24 of October 14, 2011, and the continuous trauma injury, fall outside the period of coverage for the
25 insurance policy issued by Liberty.

26 12. The parties stipulate that pursuant to the terms of the insurance policy issued by
27 Liberty to PIPS, a continuous trauma injury is only covered by the insurance policy if the
28 ///

1 employee's last date of last exposure to those conditions causing or aggravating such bodily injury
2 by disease occurs during the policy period.

3 13. The parties stipulate that PIPS and Liberty entered into a settlement agreement
4 dated April 1, 2019, wherein PIPS released “any and all cumulative injury claims (‘CT Claims’)
5 wherein the claimant’s last day of last exposure (‘LDLE’) to those conditions causing or
6 aggravating the cumulative injury occurred after the expiration date of the Liberty Policy, July 1,
7 2011.”

8 14. The parties stipulated that Liberty is liable to reimburse PIPS for covered loss in
9 connection with the specific injury of September 24, 2010, subject to the other terms, conditions,
10 and limitations of the policy, and in excess of a \$100,000 retention, regardless of when benefits
11 are payable, even if the benefits are payable after the policy if the employees last date period
12 contained in the insurance policy issued to PIPS by Liberty.

DISCUSSION OF ISSUES

A.

15 Is the claim for the specific injury of October 14, 2011 a compensable consequence of the
16 specific injury of September 24, 2010 or a separate and distinct injury?

17 The Arbitrator finds that applicant, C [REDACTED] E [REDACTED], suffered a specific injury on
18 September 24, 2010.

19 The Arbitrator finds that applicant, C [REDACTED] E [REDACTED], suffered a specific injury on
20 September 24, 2010, based on the applicant's history given to the various physicians and the
21 opinion of Dr. Mark Ganjianpour, which is found to be the better reasoned and more persuasive
22 and Dr. Mark Ganjianpour's report which was more contemporaneous in time as to the industrial
23 injury as he saw the applicant in 2011.

As to history, Dr. Mark Ganjianpour in his report of August 10, 2011, reports that the applicant on September 24, 2010, was performing his customary duties as a maintenance man and as he was going over a fence, experienced a popping sensation in his right shoulder. He had immediate pain and feeling dislocation.

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1 Applicant had surgery on January 11, 2011 consisting of a right shoulder rotator cuff repair,
2 as well as distal clavicle resection.

3 Dr. Mark Ganjianpour opined that based on the available information that applicant's
4 current symptoms for the right shoulder were caused by the injuries he sustained on September 24,
5 2010. The apportionment was 100% disability to that injury.

6 The applicant was given a work restriction of maximum lifting up to 15 pounds at no work
7 at or above shoulder level on the right side.

8 He further concluded that cervical spine sprain/strain and inability to sleep, resolved after
9 the shoulder condition had improved.

10 Based on the above evidence, the Arbitrator finds the applicant sustained a specific injury
11 on September 24, 2010 to the right shoulder and the complaints to the cervical spine sprain/strain
12 and inability to sleep resolved.

13 The Arbitrator finds that applicant, C[REDACTED] E[REDACTED] suffered a second specific injury on
14 October 14, 2011.

15 The Arbitrator finds that applicant, C[REDACTED] E[REDACTED] suffered a specific injury on October
16 14, 2011 based on the applicant's history given to the various physicians, his deposition testimony
17 and the opinion of Dr. Ganjianpour, which is found to be the better reasoned and more persuasive
18 and Dr. Ganjianpour's report was more contemporaneous in time as to the industrial injury as he
19 saw the applicant in November 2011.

20 The applicant testified in his deposition that on October 14, 2011, he was working on a
21 football field and was filling up bags with rubber and was putting the bags on the electric cart and
22 was taking them out to dump them in a larger container.

23 Because he was shoveling in a lot, putting that rubber into the bags and bags in the cart, he
24 felt injury to his shoulder. He felt pain in his shoulder, while shoveling and lifting the bags, to his
25 left shoulder and both wrists.

26 Dr. Ganjianpour in his report of November 16, 2011, reported the applicant sustained an
27 injury on October 14, 2011, while employed as a maintenance man. The applicant stated he
28 sustained injuries on October 14, 2011 in the process of removing artificial turf from the playing

1 field on campus. The applicant placed the artificial turf into rubber trash bags that were provided
2 to him and then placed the rubber bags on the back of an electrical cart to be transported to a trash
3 bin. As the applicant lifted one of the bags, he felt a sharp pain in his left shoulder, left elbow,
4 both wrists and lower back. He relates he had only performed this task for about an hour when he
5 experienced the pain. The applicant reported the injury. The applicant went for medical attention.

6 The applicant reported complaints to the left shoulder, left wrist, right risk, lower back and
7 psyche.

8 The physician concluded that based on the applicant's history and the physical exam and
9 x-rays, he believed the applicant's current complaints to the left shoulder, bilateral hands and
10 lumbar spine were related to the October 14, 2011 injury.

11 The physician further indicated it should be noted the applicant did have another injury
12 prior to the right shoulder and cervical spine. The new injury did not involve the previous body
13 parts. Therefore, there is no apportionment to previously injured body parts with regard to the
14 current injury.

15 Dr. Ganjianpour in his report of November 16, 2011, stated that it should be noted that the
16 applicant is complaining of anxiety and depression.

17 The primary treating physician recommended the applicant see a psychiatrist or
18 psychologist to determine whether the injury was related to work.

19 Based on the above evidence, the Arbitrator finds the applicant sustained a specific injury
20 on October 14, 2011, to the left shoulder, bilateral hands and lumbar spine and the new injury that
21 did not involve the previous body parts as the September 24, 2010 injury.

22 PIPS takes the position, based on the deposition testimony of Dr. Silbart, supports a partial
23 compensable consequence of the October 14, 2011 specific injury as a result of the September 24,
24 2010 injury which is partially separate and distinct.

25 Based upon the above evidence, the Arbitrator rejects the opinion of Dr. Silbart as not being
26 based on substantial medical evidence. The evidence clearly supports two separate specific
27 injuries to different parts of the body with different mechanisms of injury.

28 / / /

The medical reports of the primary treating physician are more contemporaneous to the events found to specific injuries and is better reasoned and more persuasive.

In the opinion of the Arbitrator, the idea that the specific injury of October 11, 2011 is a compensable consequence in part of the specific injury of September 24, 2010, is not supported by the facts of the case and the medical evidence.

B.

7 Is the claim for the continuous trauma injury from August 2005 through October 14, 2011 a
8 compensable consequence of the specific injury of September 24, 2010, or a separate and
9 distinct injury?

10 The Arbitrator finds that C [REDACTED] E [REDACTED] suffered a continuous trauma from August 2005
11 through October 14, 2011.

12 Dr. Steven Silbart in his report of May 14, 2018, finds the applicant sustained a continuous
13 trauma injury working at Beverly Hills Unified School District beginning in August 2005.

14 The physician takes a history that the applicant states that around September 24, 2010, he
15 sustained an injury. The applicant was trying to go on top of the fence, he pulled himself up,
16 holding on to the bleachers, at which time, he felt pain in his right shoulder.

17 The applicant states that on October 14, 2011, he was shoveling fragments of turf from the
18 field and loading them into a utility cart when he started to notice discomfort in his left shoulder,
19 wrist hands and low back.

20 The applicant was present with symptoms to the cervical spine, right shoulder, left
21 shoulder, wrists, hands, lumbar sacral spine and cervical spine.

22 The physician indicated he was evaluating the applicant for a specific injury on September
23 24, 2010, October 14, 2011, as well as a continuous trauma injury.

24 The physician finds an industrial injury to the neck, low back and both wrists as a result of
25 the continuous trauma injury.

26 Dr. Steven Silbart in his report of May 25, 2018, finds as to the cervical and lumbar
27 disability is apportioned 85% to continuous trauma injury. He did not find apportionable lumbar
28 disability relative to the October 14, 2011 specific injury.

1 With respect to the wrist, 70% is apportioned to the continuous trauma injury.

2 With respect to the right shoulder disability, all is apportioned to the September 24, 2010
3 specific injury and the left shoulder is apportioned entirely to the October 14, 2011 specific injury.

4 Based on the applicant's history and the medical report of Dr. Steven Silbart, the entire
5 medical record, the Arbitrator finds the applicant sustained a continuous trauma from August 2005
6 through October 14, 2011.

7 PIPS agrees the applicant sustained a continuous trauma injury; however, they argue that
8 part of the continuous trauma injury is a compensable consequence of the specific injury of
9 September 24, 2010.

10 The law provides that if an applicant returns to work after an industrial injury and a new
11 body part is injured as a result of the work, the applicant may be deemed to have suffered a separate
12 injury. That is because it is well established that the acceleration, aggravation or lighting up of a
13 pre-existing condition will result in a compensable injury.

14 In the case of *Ponce v. Barrett Business Services* (2017 Cal. Wrk. Comp. P.D. LEXIS 175)
15 the WCAB affirmed the WCJ's finding that applicant, a truck driver, suffered cumulative industrial
16 injury to his left wrist during the period ending on March 4, 2015 and the issue of whether wrist
17 injury was compensable consequence of applicant's prior shoulder injury incurred at applicant's
18 previous employment was not tried or determined.

19 The WCAB addressed defendant's assertion that wrist injury was compensable
20 consequence by observing that injury is a "compensable consequence" if subsequent injury is
21 direct and natural consequence of original industrial injury and relates back to original injury, but
22 that acceleration or aggravation of preexisting industrial injury is compensable as a separate injury
23 AOE/COE if aggravation is reasonably attributable to employee's subsequent employment, and
24 WCAB found that medical evidence in this case indicated that wrist injury was due to stress on
25 applicant's wrist because of the work he was performing for defendant, that opinion of orthopedic
26 Qualified Medical Evaluator, Robert R. McIvor, M.D., stating that prior shoulder injury was a
27 contributing factor regarding stress on the wrist was not inconsistent with his explanation regarding
28 why the cumulative trauma during applicant's employment by defendant was also a contributing

1 factor. The WCJ's finding of injury AOE/COE to his left wrist was consistent with medical
2 evidence submitted at trial.

3 The WCAB stated in the *Ponce* case, the parties do not dispute the fact that applicant had
4 additional stress on his left wrist as a result of his work for defendant. However, the defendant
5 argues that the left wrist injury is a compensable consequence of the shoulder injury and that it is
6 not a separate injury. An injury is a "compensable consequence" when the subsequent injury is
7 the direct and natural consequence of an original industrial injury; the subsequent injury is
8 considered to relate back to the original injury (e.g., *Beaty v. Workers' Comp. Appeals Bd.* (1978)
9 80 Cal. App. 3d 397 [144 Cal. Rptr. 78, 43 Cal. Comp. Cases 444.]

10 Here, applicant returned to work for defendant after recovering from his left shoulder
11 surgery. His left wrist injury was the result of applicant having "to adjust the way he bent down
12 and using a ratchet binder which puts stress on his left wrist."

13 It is well established that the acceleration, aggravation or 'lighting up' of a preexisting
14 condition "is an injury in the occupation causing the same." (*Tanenbaum v. Industrial Acc. Com.*
15 (1935) 4 Cal. 2d 615, 617 [1935 Cal. LEXIS 590]; *Zemke v. Workmen's Comp. Appeals Bd.* (1968)
16 68 Cal. 2d 794 [33 Cal. Comp. Cases 358]; *Reynolds Electrical & Engineering Co. v. Workers'*
17 *Comp. Appeals Bd. (Buckner)* (1966) 65 Cal. 2d 438 [55 Cal. Rptr. 254, 421 P.2d 102, 31 Cal.
18 Comp. Cases 421].) Also, "pathology" may not be apportioned. (*Pullman Kellogg v. Workers'*
19 *Comp. Appeals Bd. (Normand)* (1980) 26 Cal. 3d 450 [161 Cal. Rptr. 783, 605 P.2d 422, 45 Cal.
20 Comp. Cases 170]; *Duthie v. Worker's Comp. Appeals Bd.* (1978) 86 Cal. App. 3d 721 [43 Cal.
21 Comp. Cases 1214].)

22 There does not appear to be a dispute as to whether the "stress" to applicant's left wrist
23 after he returned to work was a contributing factor regarding his wrist condition. As noted, the
24 acceleration or aggravation of a preexisting industrial injury is compensable as an injury arising
25 out of and in the course of the employment, if the aggravation is reasonably attributable to the
26 injured worker's subsequent employment (*Smith v. Workmen's Comp. App. Bd.* (1969) 71 Cal. 2d
27 588 [34 Cal. Comp. Cases 424].)

28 ///

1 Dr. McIvor and Dr. Schmidt stated that applicant's left wrist injury was a compensable
2 consequence of the 2011 left shoulder injury. However, as noted above, Dr. McIvor explained
3 that the wrist injury was due to stress on applicant's wrist because of the work he was performing
4 for defendant and Dr. Schmidt agreed with that analysis. It appears that the doctors' opinions
5 regarding what constitutes a compensable consequence are based on an inaccurate understanding
6 of the definition of the term. It is well established that a medical report is not substantial evidence
7 if the doctor's opinion is based on an incorrect legal theory. (*Place v. Workmen's Comp. App. Bd.*
8 (1970) 3 Cal. 3d 372 [35 Cal. Comp. Cases 525].)

9 As stated above, Dr. McIvor explained and reiterated his opinion that the applicant's left
10 wrist injury was due to stress on his wrist as a result of the work he was doing for defendant. The
11 doctor's opinion that the prior injury was a contributing factor regarding the stress is not
12 inconsistent with his explanation of why the cumulative trauma during applicant's employment by
13 defendant was also a contributing factor. Under these circumstances, the finding that applicant
14 sustained injury arising out of and occurring in the course of employment to his left wrist is
15 consistent with the medical evidence submitted at trial. The WCAB then denied the defendant's
16 petition.

17 Turning to the facts of this case and the issue of is the claim for the continuous trauma
18 injury from August 2005 through October 14, 2011 a compensable consequence of the specific
19 injury of September 24, 2010, or a separate and distinct injury, the Arbitrator finds that based on
20 the facts of this, the *Ponce* case and the medical evidence that continuous trauma injury from
21 August 2005 through October 14, 2011 is a separate and distinct injury, not a compensable
22 consequence in whole or in part to the specific injury of September 24, 2010.

23 The facts and medical evidence establish that the applicant sustained a specific injury on
24 September 24, 2010 to the right shoulder and the complaints to the cervical spine sprain/strain and
25 inability to sleep, resolved and suffered a second specific injury on October 14, 2011.

26 The Arbitrator found the applicant sustained a continuous trauma claim from 2005 through
27 October 14, 2011 to the applicant's bilateral wrists, bilateral hands, back, lumbar spine and neck.

28 ///

1 The evidence supports that most of the continuous trauma injury is a separate and distinct
2 injury because it involves, for the most part, different body parts than the specific injury, a different
3 mechanism injury than the specific injuries or, in the case, the issue of the neck following the
4 specific injury resolved and the start date for the continuous trauma injury was in 2005 prior to
5 either specific injury.

6 PIPS in their argument concedes that part of the continuous trauma injury from 2005
7 through October 14, 2011 is in part a separate and distinct injury.

8 PIPS argues that part of the continuous trauma injury is compensable consequence of the
9 specific injury of September 24, 2010. They argue that the applicant injured his right shoulder in
10 the September 24, 2010 specific injury causing him to overuse his left shoulder when returning to
11 work prior to the injury of October 14, 2011, resulting in a compensable consequence injury to the
12 left shoulder. They also argued that the cervical spine injury was the result in part of September
13 24, 2010 specific injury and when he returned to work, work aggravated the neck making that a
14 compensable consequence of the September 24, 2010 specific injury.

15 PIPS relies on the testimony of Dr. Silbart in his deposition that part of the continuous
16 trauma is a compensable consequence of the specific injury of September 24, 2010. Dr. Silbart,
17 after he was apprised of the overuse of the left shoulder when applicant returned to work and the
18 applicant exceeding work restrictions when he returned after the specific injury, apportioned the
19 left shoulder 66% as a compensable consequence of the September 24, 2010 injury and 33.4% to
20 the specific injury of October 14, 2011. For the wrists, he attributed 33.4% to a compensable
21 consequence of the September 24, 2010 injury and 66.6% to the continuous trauma injury. For
22 the lumbar spine, he attributed 66% to a compensable consequence of the September 24, 2010
23 injury and 33.4% to the continuous trauma.

24 The Arbitrator found that none of the continuous trauma injury was a compensable
25 consequence of the September 24, 2010 injury because the law provides that an acceleration or
26 aggravation of a preexisting industrial injury is compensable as an injury arising out of and in the
27 course of the employment, if the aggravation is reasonably attributable to the injured worker's
28 // /

1 subsequent employment (*Smith v. Workmen's Comp. App. Bd.* (1969) 71 Cal. 2d 588 [34 Cal.
2 Comp. Cases 424].

3 In addition, it is well established that the acceleration, aggravation or ‘lighting up’ of a
4 preexisting condition “is an injury in the occupation causing the same.” (*Tanenbaum v. Industrial*
5 *Acc. Com.* (1935) 4 Cal. 2d 615, 617 [1935 Cal. LEXIS 590]; *Zemke v. Workmen's Comp. Appeals*
6 *Bd.* (1968) 68 Cal. 2d 794 [33 Cal. Comp. Cases 358]; *Reynolds Electrical & Engineering Co. v.*
7 *Workers' Comp. Appeals Bd. (Buckner)* (1966) 65 Cal. 2d 438 [55 Cal. Rptr. 254, 421 P.2d 102,
8 31 Cal. Comp. Cases 421].)

9 Also, “pathology” may not be apportioned. (*Pullman Kellogg v. Workers' Comp. Appeals*
10 *Bd. (Normand)* (1980) 26 Cal. 3d 450 [161 Cal. Rptr. 783, 605 P.2d 422, 45 Cal. Comp. Cases
11 170]; *Duthie v. Worker's Comp. Appeals Bd.* (1978) 86 Cal. App. 3d 721 [43 Cal. Comp. Cases
12 1214].)

13 Therefore, the injury to the applicant, if in part caused by returning to work exceeding the
14 work restriction and favoring his right shoulder resulting in an injury to his left shoulder, that injury
15 would be a separate and distinct injury and not a compensable consequence and in part of the
16 September 24, 2011 specific injury.

17 The facts establish the continuous trauma injury if caused in part as argued by PIPS would
18 still be a separate and distinct injury because it the injury is an acceleration, aggravation or ‘lighting
19 up’ of a preexisting condition and is an injury in the occupation causing the same.

20 The Arbitrator also finds the opinions of Dr. Silbart are not based on substantial evidence
21 because he apportions based on an incorrect legal theory and ignores all the case law cited above.

22 Therefore, the facts of this case clearly establish the applicant sustained a separate and
23 distinct continuous trauma injury from 2005 through October 14, 2011 to various body parts and
24 the history and medical evidence does not support any part of that continuous trauma injury been
25 a compensable consequence of the September 24, 2010 injury.

26 Based on the above case law and facts the continuous trauma from 2005 through October
27 14, 2011, was a separate injury and not a compensable consequence of the specific injury of
28 September 24, 2010.

1 The Arbitrator finds that the applicant sustained a specific injury on September 24, 2010, a
2 specific injury on October 14, 2011 and a continuous trauma from August 2005 through
3 October 14, 2011 all of which are separate and distinct injuries.

4 The Arbitrator finding that the applicant sustained a specific injury on September 24, 2010,
5 a specific injury on October 14, 2011 and a continuous trauma from August 2005 through October
6 14, 2011 all of which are separate and distinct injuries is based on the discussion set forth above.

7 If the claim for a continuous trauma injury from August 2005 through October 14, 2011 is
8 found to be a compensable consequence of the specific injury of September 24, 2010, are the
9 injuries and benefits covered by the terms of the insurance policy issued by Liberty to PIPS?

10 The Arbitrator found as stated above that the continuous trauma injury from August 2005
11 through October 14, 2011, was a separate and district injury and not a compensable consequence
12 injury of the specific injury of September 24, 2010.

13 Therefore, this issue need not be decided.

14 However, the Arbitrator provides the following analysis on this issue.

15 The excess insurance policy issued by Liberty to PIPS provides that the loss arising from
16 bodily injury by accident or bodily injury by disease including death applies when the bodily injury
17 by accident occurs during the policy period or the bodily injury by disease is caused by or
18 aggravated by the conditions of employment. The employer's last day of last exposure to those
19 conditions causing or aggravating such bodily injury by disease must occur during the policy
20 period.

21 Liberty argues that if the continuous trauma claim was in part a compensable consequence
22 of the 2010 claim, the last day of injurious exposure causing or aggravating the bodily injury was
23 after the Liberty policy and is not covered by the terms of the policy. They argue the conditions
24 causing or aggravating such bodily injury must occur during the policy period.

25 PIPS argues that the insurance policy would cover a compensable consequence injury.
26 They argue if the secondary incident is a direct result of the compensable primary injury, the
27 secondary incident is not considered a new and independent injury and relates back to the original
28 injury.

1 PIPS further argues that the Liberty policy covers compensable consequence injuries based
2 on their policy language that states law speeds amounts that you have actually paid as a self-insured
3 under the workers' compensation law plus any expenses.

4 As stated above and for the reasons set forth above, the Arbitrator found the continuous
5 trauma was not a compensable consequence of the September injury.

6 However, the Arbitrator indicates after reviewing all the evidence, that if the Arbitrator had
7 found a compensable consequence injury, the Arbitrator would have found the policy covered the
8 injury and benefits.

9 In the opinion of the Arbitrator, this policy based on its language is an excess policy to
10 cover the injury during the policy period.

11 A compensable consequence injury by definition and by case law relates back to the
12 original injury.

13 Therefore, a compensable consequence injury would be covered by this policy in the
14 opinion of the Arbitrator.

15 If the applicant in this case had not returned to work and had a new separate injury, for
16 example the applicant because of the injury had fallen at home because of the industrial injury, an
17 otherwise nonindustrial event, that injury would become compensable and would relate back to
18 the original injury.

19 In the opinion of the Arbitrator, if that is what had happened here, the policy would cover
20 the injury for the fall at home because it relates back to the original injury and the policy covers
21 the loss arising from bodily injury by accident or bodily injury by disease including death when
22 the bodily injury by accident occurs during the policy period or the bodily injury by disease is
23 caused by or aggravated by the conditions of employment.

24 Because the original injury occurred during the policy injury and in a compensable
25 consequence injury, the second injury relates back to the first injury, the policy would cover the
26 compensable consequence injury.

27 However, again as stated above, the Arbitrator in this case found no compensable
28 consequence injury as a result of the specific injury of September 24, 2010.

1 **If the claim for a continuous trauma injury from August 2005 through October 14, 2011 is**
2 **found to be a compensable consequence of the specific injury of September 24, 2010, did**
3 **PIPS release the claim by way of settlement?**

4 The Arbitrator does not decide this issue as the Arbitrator found that the trauma claim is
5 not a compensable consequence of September 24, 2010 injury making this issue.

6 However, the Arbitrator provides the following analysis on this issue.

7 The parties stipulate that PIPS and Liberty entered into a settlement agreement dated April
8 1, 2019, wherein PIPS released “any and all cumulative injury claims (‘CT Claims’) wherein the
9 claimant’s last day of last exposure (‘LDLE’) to those conditions causing or aggravating the
10 cumulative injury occurred after the expiration date of the Liberty policy, July 1, 2011.”

11 The Arbitrator, after reviewing the settlement agreement, is of the opinion that the
12 stipulation above is the only part of the settlement agreement that applies to these cases.

13 After reviewing the settlement agreement, it is of the opinion that other than the above
14 settlement agreement between PIPS and Liberty did not settle any other issues that impacted this
15 case.

16 **If the claim for the specific injury of October 14, 2011 is found to be a compensable**
17 **consequence of the specific injury of September 24, 2010, are the injuries and benefits**
18 **covered by the terms of the insurance policy issued by Liberty to PIPS?**

19 The Arbitrator finds that if any specific injuries were found to be a compensable
20 consequence of the original injury and not a separate and distinct injury, as the Arbitrator found
21 here, the opinion of the Arbitrator although would be that the policy would cover an injury that
22 compensable consequence injury because the injury relates back to the original injury.

23 **Is PIPS entitled to prejudgment interest pursuant to Civil Code Section 3287?**

24 Civil Code Section 3287 provides as follows:

25 (a) A person who is entitled to recover damages certain, or capable of being made
26 certain by calculation, and the right to recover which is vested in the person upon a particular day,
27 is entitled also to recover interest thereon from that day, except when the debtor is prevented by
28 law, or by the act of the creditor from paying the debt. This section is applicable to recovery of

1 damages and interest from any debtor, including the state or any county, city, city and county,
2 municipal corporation, public district, public agency, or any political subdivision of the state.

3 (b) Every person who is entitled under any judgment to receive damages based upon a
4 cause of action in contract where the claim was unliquidated, may also recover interest thereon
5 from a date prior to the entry of judgment as the court may, in its discretion, fix, but in no event
6 earlier than the date the action was filed.

7 (c) Unless another statute provides a different interest rate, in a tax or fee claim against
8 a public entity that results in a judgment against the public entity, interest shall accrue at a rate
9 equal to the weekly average one-year constant maturity United States Treasury yield, but shall not
10 exceed 7 percent per annum. That rate shall control until the judgment becomes enforceable under
11 Section 965.5 or 970.1 of the Government Code, at which time interest shall accrue at an annual
12 rate equal to the weekly average one-year constant maturity United States Treasury yield at the
13 time of the judgment plus 2 percent, but shall not exceed 7 percent per annum.

14 The Arbitrator finds based on the cases interpreting Civil Code Section 3287 pre-judgment
15 interest is not applicable to his case because of the disputed facts and law.

16 The Arbitrator finds that the section only applies if a person who is entitled to recover
17 damages certain, or capable of being made certain by calculation,

18 In the opinion of the Arbitrator, the damages are not certain or capable of being made
19 certain by calculation until the factual and legal issues were decided in this case.

20 The amount of damages would differ based on the findings on the disputed issues.

21 Therefore, the Arbitrator finds PIPS is entitled to prejudgment interest pursuant to Civil
22 Code Section 3287.

23 Is the Stipulations with Request for Award entered into between PIPS and the
24 applicant, C [REDACTED] E [REDACTED], inconsistent with PIPS's position that the specific injury of
25 October 14, 2011, and the continuous trauma injury from August 2005 through October 14,
26 2011, are compensable consequences of the specific injury of September 24, 2010?

27 This issue is moot based on the findings above.

28 However, the Arbitrator provides the following opinion on the issue.

1 The Arbitrator is of the opinion that PIPS is bound by their Stipulations and Awards in the
2 underlying workers' compensation case.

3 In the opinion of the Arbitrator, an excess insurance policy is for injuries during the policy
4 period.

In this case, the applicant and defendant, PIPS, settled all three underlying workers compensation cases.

7 The settlement between the applicant and PIPS regarding the injury of September 24, 2010
8 was within the policy period of Liberty.

9 In the opinion of the Arbitrator, an excess insurance policy is related to injuries during the
10 excess policy term.

11 In the opinion of the Arbitrator, Stipulations with Request for Award between the applicant
12 and the holder of the excess policy, here PIPS, establishes their agreement to pay benefits for
13 applicant's injuries.

14 PIPS entered s into Stipulations with Request for Award agreeing to various stipulations
15 with the applicant including benefits to be paid.

16 In the opinion of the Arbitrator, PIPS is bound by those Stipulations with Request for
17 Award approved by the Appeals Board as they establish the basis for recovery in the excess
18 insurance policy.

19 However, in this case because of the early findings, this is just an opinion and is moot
20 regarding this case.

21 | DATED: July 26, 2023

ALTMAN, BLITSTEIN & BLINDER

By: Mark L Kahn
MARK L. KAHN,
ARBITRATOR

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4 **PROOF OF SERVICE**
(CCP §1013a(3))

6 **STATE OF CALIFORNIA**)
7 **COUNTY OF LOS ANGELES**)

8 I am employed in the County of Los Angeles, State of California. I am over the age of 18
9 and not a party to the within action; my business address is: 16255 Ventura Boulevard, Suite 1110,
10 Encino, California 91436.

11 On July 26, 2023, I served the foregoing document described as **ARBITRATOR'S**
12 **OPINION ON DECISION; ARBITRATOR'S FINDINGS** on the interested parties in this
13 action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

14 Albert Haverkamp, Esq.
15 Haverkamp Law Firm
15 2211 Encinitas Boulevard, Suite 225
16 Encinitas, CA 92024

Yvonne Schulte, Esq.
Clyde & Co
355 S. Grand Avenue, Suite 1400
Los Angeles, CA 90071

17 I am "readily familiar" with this firm's practice of collection and processing
18 correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal
19 Service on that same day with postage thereon fully prepaid at Encino, California in the ordinary
20 course of business. I am aware that on motion of the party served, service is presumed invalid if
21 postal cancellation date or postage meter date is more than one day after date of deposit for mailing
22 in affidavit.

23 I declare under penalty of perjury under the laws of the State of California that the above
24 is true and correct. Executed on July 26, 2023 at Encino, California.

25 
26 LETICIA LOZANO
27
28